

**Review of the Assessment of Interest, Penalties and
Administrative Charges on Benefit Overpayments,
Report No. 00-09, April 25, 2000**

BACKGROUND

The RRB's mission is to administer retirement, survivor, unemployment, and sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In fiscal year 1999, the RRB paid \$8.2 billion in retirement, disability and survivor benefits and \$69 million in unemployment and sickness benefits to railroad workers and their families.

Some of the benefits were paid in error. During fiscal year 1999, the RRB identified \$48.7 million in RRA benefit overpayments. The primary reasons for these benefit overpayments were:

- payments made after an annuitant's death (66%),
- coordination problems with the Social Security Administration (19%), and
- failure of annuitants to report earnings (8%).

The RRB also identified \$31.9 million in RUIA benefit overpayments. The major reasons for these overpayments were:

- payments made by railroad employers for on the job injuries when an employee had already received RUIA sickness insurance benefits (54%), and
- retroactive retirements to days which overlapped days for which unemployment or sickness benefits had already been paid (34%).

The RRB uses an automated receivable system, the Program Accounts Receivable (PAR) System, to control benefit overpayments. The PAR System is used to establish, maintain, and track receivables; assess interest, penalty, and administrative charges on delinquent accounts; and generate billing letters and notices to debtors.

The Debt Collection Act of 1982 provides for the assessment of interest and penalty charges on delinquent debts owed the U.S. Government. Requirements for these charges are explained in the Federal Claims Collection Standards and RRB regulations. Administrative charges may also be assessed on a debtor for the costs of processing and handling debts that become delinquent.

The RRB uses a strategic plan to achieve its mission. One strategic goal is to safeguard the customers' trust funds through prudent stewardship. To focus on this goal, one of the RRB's objectives is to ensure that trust fund assets are projected, collected, recorded, and invested appropriately through an effective and efficient trust fund management program. The RRB has established a debt

collection program that includes the assessment of interest, penalties and administrative charges on certain overpayments.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of this audit was to determine if the RRB assessed interest, penalties and administrative charges on benefit overpayments in accordance with laws and regulations.

The OIG reviewed overpayments with receivable activity in fiscal year 1998. Auditors reviewed the assessment of interest, penalties and administrative charges on these debts for fiscal years 1997, 1998 and the first half of fiscal year 1999. Auditors did not include commercial debt in the review, as it was less than 1% of both new receivables and outstanding receivables in fiscal year 1998.

To accomplish the objective, auditors:

- analyzed the Debt Collection Act, Debt Collection Improvement Act, Federal Claims Collection Standards and other applicable laws;
- interviewed RRB staff to gain an understanding of the RRB's debt collection program;
- reviewed RRB policies and procedures for assessing interest, penalties and administrative charges;
- reviewed correspondence from the Board Members and other RRB officials relating to the waiver of interest and penalty charges on overpayments being recovered through the offset of current benefits;
- compared RRB policies and procedures to the Debt Collection Act, Federal Claims Collection Standards and RRB regulations;
- developed a sampling plan and randomly selected 1,000 RRA and 100 RUIA benefit overpayments from the PAR System for review; (PAR System data was used for analysis without independent verification. Auditors screened the cases on the PAR System and identified 75 delinquent RRA and 32 delinquent RUIA overpayments for which interest was applicable. The OIG tested these overpayments for accurate and timely assessment of interest and penalty charges. Auditors reviewed claim folders to resolve discrepancies).
- analyzed the population of approximately 46,500 RRA debts established in fiscal year 1998 and identified 62 debts which had active installment agreements as of May 17, 1999; (The OIG judgmentally selected 15 of the 62

debts being repaid through an installment agreement and tested for accurate and timely assessment of interest and penalty charges. After identifying errors in some sample cases, auditors reviewed the remaining 47 debts with active installment agreements to determine if the RRB correctly calculated accrued interest and penalty charges).

- reviewed a judgmentally selected sample of 25 overpayments, selected from RRA debts outstanding at the end of fiscal year 1998, to determine if payments were applied first to penalties, then administrative costs, interest and finally principal.

The fieldwork was performed at the RRB's headquarters in Chicago, Illinois during the period April 1999 through March 2000. This audit, included in the OIG's Fiscal Year 1999 Annual Work Plan, was performed in accordance with generally accepted government auditing standards appropriate for this type of review. However, the OIG performed only limited testing of internal controls. Instead, the OIG relied on control assessments prepared by RRB Program Managers in the Management Control Review Reports. The OIG also examined work performed during a prior review of the RRB's financial statements.

Results of Review

With a couple of exceptions, the RRB assessed interest, penalty, and administrative charges in compliance with laws and regulations. During fiscal year 1998, the RRB established new receivables on RRA and RUIA benefit overpayments of \$51.7 million and \$34.1 million respectively. The RRB assessed \$1.4 million in interest, penalty and administrative charges. The amount of charges was relatively low because the RRB was precluded from charging interest and penalties on the majority of the benefit overpayments. The RRB assessed interest in 32% of the RUIA and 7% of the RRA sample cases. The remaining overpayments did not meet legal requirements for the assessment of interest or were exempted from charges by RRB policy.

The RRB followed a policy of waiving charges on overpayments collected through full or partial withholding. This policy conflicted with RRB regulations. The RRB also used incorrect rates in assessing interest on seven of the 1,000 RRA sample cases. In addition, the RRB made some minor errors in assessing accrued interest and penalty charges on debts being repaid under installment agreements.

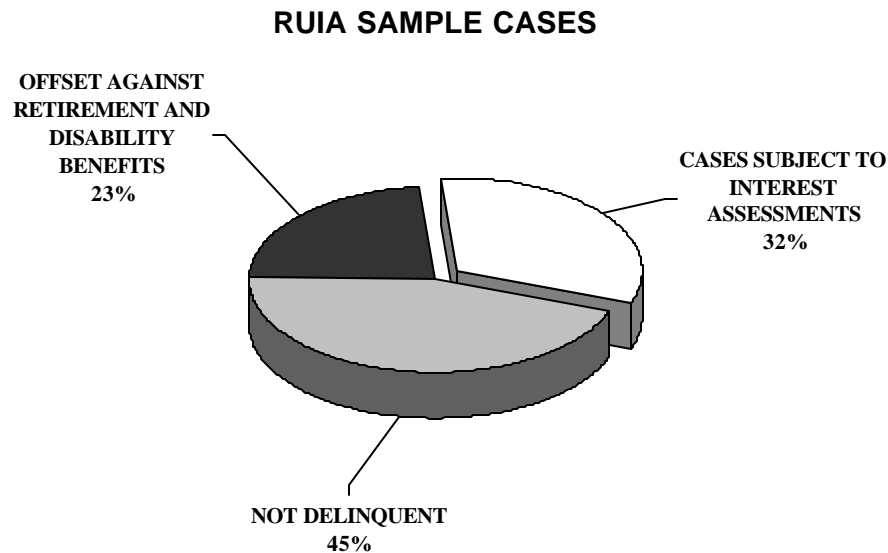
Details of these situations and recommended corrective actions are discussed in the following sections of the report.

ASSESSMENT OF INTEREST ON RUIA BENEFIT OVERPAYMENTS

The RRB did not charge interest in 45% of the 100 RUIA sample overpayments because the debts were never delinquent. For interest to be assessed, a debt must be delinquent. A debt becomes delinquent if it is not paid within 30 days after the debtor is notified of the overpayment. Interest was not charged in an additional 23% of the sample cases because the overpayments were collected through internal accounting adjustments. In these cases, individuals who received unemployment or sickness benefits subsequently retired or claimed disability retroactive to a time during which they were ill or unemployed. RUIA benefits paid for the overlapping periods were withheld from the retirement or disability benefits to which the individuals were entitled.

The following chart shows a breakdown of the 100 randomly selected RUIA cases with receivable activity in fiscal year 1998. It identifies cases that were

potentially subject to interest assessments and the types of cases in which interest assessments were not applicable.



ASSESSMENT OF INTEREST ON RRA BENEFIT OVERPAYMENTS

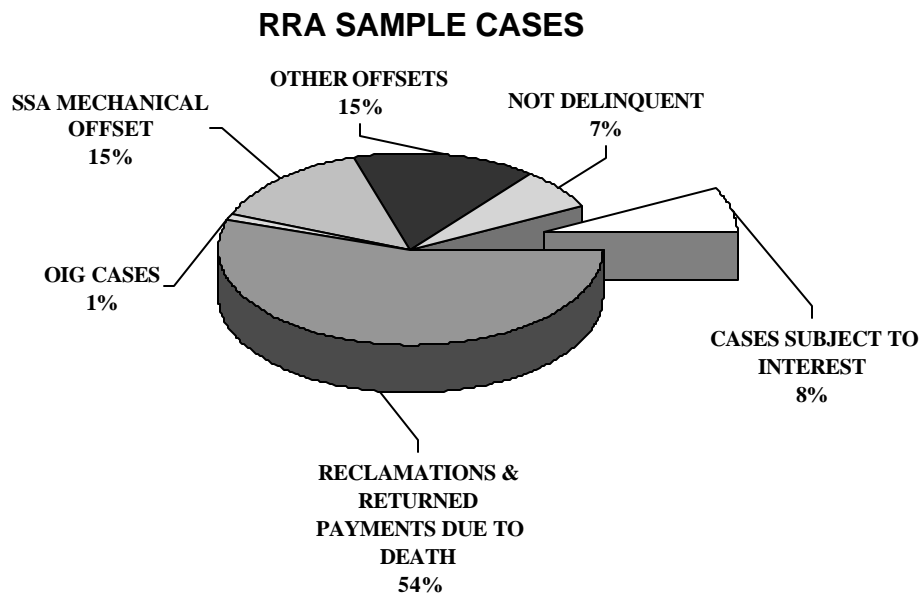
The RRB did not assess interest on 93% of the 1,000 RRA sample cases. The largest reason for not assessing interest was that overpayments in death cases were collected by reclamation and returned payments. Reclamation relates to Department of the Treasury procedures for recovering overpayments from the bank accounts of deceased annuitants. The OIG classified returned payments as cases in which overpayments were returned without being negotiated, and cases in which payments were negotiated but the overpaid amounts were paid back to the RRB before the RRB issued overpayment letters. The RRB could not assess interest on reclamation and returned payment cases because the overpayments were resolved before an overpayment letter was sent. The Federal Claims Collection Standards require that an agency notify the debtor of an overpayment and interest requirements prior to assessing interest.

In a Social Security Act (SSA) mechanical offset, an RRA overpayment (caused by increased SSA benefits) is established and almost immediately offset against the increased SSA benefit. No interest is assessed because no overpayment letter is mailed and the debt is not delinquent.

The RRB does not assess interest in potential fraud cases referred to the OIG for investigation until the OIG declines the case or until the RRB is instructed to assess interest by the Department of Justice or a Federal court.

Other offsets are overpayments being recovered through full or partial withholding of current RRB benefits. The Board Members established a policy of waiving interest in these types of overpayments.

The following chart shows a breakdown of the 1,000 randomly selected RRA cases with receivable activity in fiscal year 1998. It identifies cases that were potentially subject to interest assessments and the types of cases in which interest assessments were not applicable.



POLICY FOR WAIVING INTEREST AND PENALTY CHARGES

The RRB does not charge interest and penalties on overpayments collected through full or partial withholding of benefits. Interest and penalties are not charged even if the annuitants are at fault in causing the overpayments.

The Debt Collection Act of 1982 allows agencies to waive the collection of charges under circumstances which comply with the Federal Claims Collection Standards prescribed by the Comptroller General and Attorney General. These standards allow an agency to waive charges in accordance with regulations issued by the agency identifying the standards and appropriate circumstances for waiver.

RRB regulations (20 CFR 200.7) provide that charges may be waived when, in the judgement of the RRB, collecting charges on delinquent debt would be against equity and good conscience, or not be in the best interests of the United States. In determining whether the collection of charges is against equity and good conscience, RRB regulations provide that the agency consider the debtor's

fault in causing the overpayment and whether the debtor, in reliance on the incorrect payment, relinquished a valuable right or changed his or her position for the worse.

In determining whether the collection of charges is not in the best interests of the United States, RRB regulations provide that the RRB consider whether the collection of charges would result in the debt never being repaid and whether collecting charges would cause undue hardship.

In a December 4, 1992 memorandum to the Debt Recovery Manager, the RRB's General Counsel commented that, under the RRB's regulations (20 CFR 200.7), the only criteria that would seem to cover a blanket waiver policy on interest and penalty charges would be the fault criteria. The RRB could apply waivers in all offset situations in which the debtors were without fault.

In 1993, the Board Members made a policy decision to waive the assessment of interest and penalties on all overpayments being recovered through full or partial withholding of current retirement, survivor or disability benefits. In making their decision, a majority of the Board decided to extend the blanket waiver to any case in which the debtor was at fault for the overpayment. As a result, the RRB recovered overpayments through full or partial withholding and automatically waived interest without considering fault, relinquishment of valuable rights, repayment of the debt and undue hardship. Prior to the Board Members' decision, program officials had been waiving charges on overpayments collected through withholding of benefits using the rationale that the Social Security Administration did not assess charges in similar situations. Since the RRB administered entitlement programs similar to the Social Security Administration's programs, RRB officials deemed it prudent to follow the Social Security Administration's example. Program officials also argued that the costs and manpower needed to make decisions on the waiver of charges on a case by case basis would be unreasonable. Under the Board's policy, the blanket waiver of charges does not apply to the relatively small number of cases in which the RRB clearly establishes fraud by debtors.

The policy established by the Board Members requires the RRB to waive interest on cases that may not qualify for waiver under the RRB's regulations. The outstanding debt subject to full or partial withholding of benefits at the end of fiscal year 1998 totaled an estimated \$28 million. Because of the blanket waiver, the RRB does not develop information (including fault) to determine if collection of charges would be against equity and good conscience, or not in the best interest of the United States. Therefore, the RRB does not have data to reflect how much of the \$28 million was due to the fault of debtors. Without this information, the RRB is unable to determine the amount of interest and other charges that the RRB waived on cases that would not qualify for waiver under the RRB's regulations.

Recommendation:

The OIG recommends that the Board Members take action to remove the conflict between RRB regulations and the policy requiring the blanket waiver of interest charges.

Management's Response:

The majority of the Board Members concurred with the recommendation and directed the General Counsel to draft regulatory changes to conform with the current Board policy.

RATES USED TO ASSESS INTEREST ON DELINQUENT DEBT

The RRB used an incorrect rate to assess interest in seven of 1,000 RRA sample cases. The debts with the incorrect rates were established prior to July 1, 1995.

The Department of the Treasury determines the rate of interest to be charged on delinquent debt and can make quarterly revisions. The interest rate applicable to an overpayment is the rate in effect at the time notice of the debt and demand for repayment with interest is first mailed or hand delivered to the debtor. The RRB provides debtors with this information in an overpayment letter. Once established, an interest rate normally remains fixed for the life of the debt. However, if a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the RRB can establish a new interest rate.

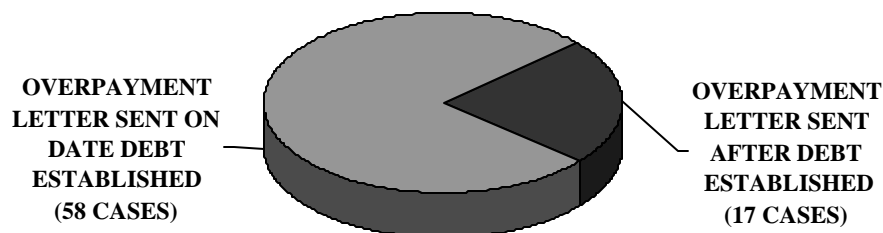
The RRB used an incorrect rate in assessing interest because the PAR System was programmed to use the interest rate in effect at the time a debt was established in the system. The PAR System is a component of the Federal Financial System that was developed in accordance with federal reporting requirements. In most cases the PAR System released an overpayment letter on the same day that a debt was established. However, in some cases, overpayment letters were suppressed and sent at later dates. If the interest rate changes between the date a debt is established and the date an overpayment letter is released, an incorrect rate may be used. The RRB usually suppresses overpayment letters when overpayments are being recovered from banks (Treasury reclamation) or when cases are referred to the OIG for investigation.

Based on a recommendation in a previous OIG report, "Review of the PAR System Data Integrity," dated March 10, 1995, the RRB developed an internal control to identify incorrect interest rates. An automated program compares interest rates used by the PAR System to rates prescribed by the Department of the Treasury for the dates debts were established. Exceptions are noted on a monthly report and reviewed for corrective action. However, this internal control

does not identify incorrect rates that can occur when overpayment letters are sent after debts are established.

Seventy-five of the 1,000 RRA overpayment cases in the sample were delinquent debts and interest charges were applicable. The following chart reflects when overpayment letters were mailed in relation to when the debts were established.

75 RRA SAMPLE CASES IN WHICH INTEREST APPLIED



The correct interest rates were used in the 58 cases where the overpayment letters were sent and the debts were established on the same dates. Details of the remaining 17 cases, in which overpayment letters were sent after the debts were established, are presented in the following table.

Interest Rates in Effect When Overpayment Letters Sent and When Debts Established	Accuracy of Interest Rates Used to Assess Interest	
	Accurate	Inaccurate
Same Rates	8	
Different Rates	2*	7

*** The RRB manually adjusted these two cases to use the correct rate in assessing interest.**

The RRB used the correct interest rates in 68 of the 75 sample cases. In seven cases (all established prior to July 1, 1995) different interest rates were in effect when the debts were established and overpayment letters were released. As a result, the RRB overcharged interest in three cases by a total of approximately \$1,300 and undercharged interest in the remaining four cases by a total of approximately \$30. The debt and applicable interest charges were written-off as uncollectible in three of the undercharged interest cases. The OIG brought the error cases to the attention of RRB management and the RRB corrected the interest assessments in the other four cases.

Establishing debts in the PAR System and sending overpayment letters on different dates did not impact debts established after July 1, 1995 because interest rates remained constant. Interest rates for the last 10 years are presented in the following table.

Time Period	Interest Rate
1990	9.0%
1991	8.0%
1992	6.0%
1993	4.0%
1994	3.0%
1/1/95 – 6/30/95	3.0%
7/1/95 – 12/31/95	5.0%
1996	5.0%
1997	5.0%
1998	5.0%
1999	5.0%

Management Corrective Action:

The OIG discussed the use of incorrect interest rates with RRB management. The RRB developed a monthly report, which will identify situations where overpayment letters are sent on dates after the related debts are established. These cases will be manually reviewed to determine if the established interest rates need to be corrected. This should ensure that the RRB will correctly assess interest if interest rates begin to fluctuate.

ACCRUED INTEREST AND PENALTY CHARGES

The RRB made errors in calculating the amount of accrued interest and penalties on some debts being repaid under installment agreements.

Interest accrues from the date on which an overpayment letter is mailed or hand delivered to a debtor. RRB regulations (20 CFR 200.7(b)(1)) state that simple interest shall be assessed once a month on the unpaid principal of a delinquent debt. A debt becomes delinquent if it is not paid within 30 days after a debtor is notified of the overpayment. Debts that are repaid through an installment agreement are not considered delinquent unless a required payment is not made.

A penalty charge of 6% per year shall be assessed on any debt that is delinquent for more than 90 days. The penalty charge accrues from the date a debt becomes delinquent.

The RRB made errors in calculating the amount of accrued interest on 7 of 62 reviewed overpayments being repaid under installment agreements. The RRB under assessed accrued interest by a total of approximately \$50. These errors occurred because the PAR System calculated accrued interest on the outstanding principal of a debt as of the date the accrual was calculated. Monthly payments made under installment agreements had reduced the debt balances on which the PAR System calculated the interest accruals. Interest should have been calculated based on the various monthly balances instead of the outstanding balances at the end of the accrual periods.

At the end of fiscal year 1998, there were approximately 250 debts with installment agreements representing approximately 2% of outstanding debts. These cases included installment agreements for debts established in fiscal year 1998 as well as debts established in prior years. Based on the review of the 62 cases mentioned above, the OIG estimated that the RRB under assessed interest of about \$190 on 29 of the 250 active agreements.

Due to the small number of cases involved and small dollar impact of potential errors, no recommendation is being made to reprogram the PAR System to specifically address this situation. This condition was presented to the RRB for consideration when making other programming changes.